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21 SEP 2006

In re Application of	:	
Lee et al.	:	
Application No.: 10/568,096	:	DECISION
PCT No.: PCT/US01/14591	:	
Int. Filing Date: 26 May 2000	:	ON
Priority Date: 28 May 1999	:	
Attorney Docket No.: 2366-003-03	:	PETITION
For: Universal Teller Machine In 3-1/2 Inch Floppy Disk :	:	

This is in response to the petition under 37 CFR 1.137(b) filed on 10 February 2006.

BACKGROUND

This international application was filed on 26 May 2000, claimed an earliest priority date of 28 May 1999, and designated the U.S. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 28 November 2001. This international application became abandoned with respect to the United States for failure to timely pay the required basic national fee.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply in the form of the basic national fee accompanied the instant petition.

Regarding requirement (2), the petition fee has been paid.

Regarding requirement (3), petitioner states that, during the period from the due date for the basic national fee (28 November 2001) until 28 April 2005, this application was under the control of the bankruptcy court, which "took control over UTM's property, which included the PCT application" on 27 August 2001. Petitioner also states that "The duration of the eight-month-period between receiving ownership of the PCT application and filing this petition to revive the patent application was unintentional." Petitioner suggests that the delay between 28 April 2005 was attributable to petitioner having "searched for and retrieved facts to support this petition to revive," but has neither explicitly stated that nor explained how this entire period

constitutes unintentional delay. Moreover, petitioner has not adequately addressed the knowledge and actions of the bankruptcy trustee during the period from 28 November 2001 until 28 April 2005. For instance, it is unclear whether the bankruptcy trustee appreciated the significance of the delay in paying the basic national fee, or whether the trustee made a conscious decision to delay that payment. Furthermore, petitioner's statement that "UTM unintentionally lost track of the 28 November 2001 deadline to pay the national fee..." raises the issue of whether UTM in fact did enjoy any degree of control over the possibility of paying the basic national fee in this time period. For instance, petitioner has not detailed whether UTM made any payments to the USPTO relating to other patent applications during the period from 28 November 2001 until 28 April 2005. For these reasons, it would not be appropriate to conclude that requirement (3) has been satisfied on the basis of the present record.

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

Concerning the conditional petition to revive directed to application no. 09/322,669, counsel is advised that consideration of the issues in question requires the filing of a proper petition (and fee) in that application. No representation is made as to the propriety of such a petition.

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, P.O. Box 1450, Mail Stop PCT, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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